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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

S. PARKER CONSTRUCTION, INC., a
Utah corporation, dba BARRY
PARKER CONSTRUCTION,

Plaintiff,

v.

SUNTEX HOMES, LLC., et al.,

Defendants.

2:08-CV-1439 JCM (GWF)

Date: N/A

Time: N/A

ORDER

Presently before the court are plaintiff/counter-defendant/fourth-party plaintiff S. Parker Construction, Inc. d/b/a Barry Parker Construction's (hereinafter "S. Parker") emergency motion for preliminary injunction (doc. #54) and emergency motion to substitute party First American Title Company in place of Heath S. Snow (doc. #56). Defendant filed an opposition to both motions. (Doc. #59). S. Parker has failed to file a reply.

Preliminary Injunction

The Supreme Court has held that courts must consider the following factors in determining whether to issue a temporary restraining order and preliminary injunction: 1) a likelihood of success on the merits; 2) possibility of irreparable injury if preliminary relief is not granted; 3) balance of hardships; and 4) advancement of the public interest. *Winter v. N.R.D.C.*, 129 S. Ct. 365, 374-76 (2008).

1 Here, plaintiff S. Parker is asking this court to enter a preliminary injunction to prevent
 2 foreclosure on properties that are the subject of this litigation. On April 30, 2010, this court entered
 3 an order (doc. #58) denying the plaintiff's request for a temporary restraining order. After
 4 considering the factors above in *Winter*, the court held that "the plaintiff [had] not demonstrated a
 5 threat of immediate and irreparable injury, loss, or damages as required," and that "plaintiff [had]
 6 an adequate remedy at law in the form of mechanic's lien and monetary damages. *Id. See Aronoff*
 7 *v. Katleman*, 75 Nev. 424 (1959).

8 As the court looks at the same factors in determining the appropriateness of a preliminary
 9 injunction, and since the plaintiff has failed to further demonstrate "immediate and irreparable"
 10 harm, this court is not inclined to grant the motion for preliminary injunction.

11 **Substitution of Heath S. Snow**

12 In the present motion (doc. #56), S. Parker asserts that the court should substitute party First
 13 American Title Company in place of Heath S. Snow. Plaintiff S. Parker originally incorrectly filed
 14 this motion to substitute (doc. #56) along with the motions for a preliminary injunction (doc. #54)
 15 and a temporary restraining order (doc. #55) as one motion. The motions were later filed as three
 16 separate entries and given three separate document numbers. Within the pleading that lumped all
 17 three motions together, S. Parker stated the facts of the case, and then made arguments and presented
 18 points and authorities with regards to the preliminary injunction and temporary restraining order.
 19 However, the motion did not contain any points and authorities to support the motion to substitute.

20 Under Federal Rule of Civil Procedure 7(b)(1), in a motion for relief, a party must "state with
 21 particularity the grounds for seeking" a court order. Further, pursuant to Local Rule 7-2(d), "[t]he
 22 failure of a moving party to file points and authorities in support of the motion shall constitute a
 23 consent to the denial of the motion." Since S. Parker has failed to file the necessary points and
 24 authorities to support its motion, this court is inclined to deny the motion to substitute (doc. #56).
 25 Additionally, denial of the motion is appropriate due to the fact that S. Parker did not file a reply to
 26 the opposition nor attempt to provide the court with supplemental points and authorities in support
 27 of its motion to substitute.

1 Accordingly,

2 IT IS HEREBY ORDERED ADJUDGED AND DECREED that plaintiff/counter-
3 defendant/fourth-party plaintiff S. Parker Construction, Inc. d/b/a Barry Parker Construction's
4 emergency motion for preliminary injunction (doc. #54) be, and the same hereby is, DENIED.

5 IT IS FURTHER ORDERED that plaintiff/counter-defendant/fourth-party plaintiff S. Parker
6 Construction, Inc. d/b/a Barry Parker Construction's emergency motion to substitute party First
7 American Title Company in place of Heath S. Snow (doc. #56) be, and the same hereby is, DENIED.

8 DATED this 31st day of January, 2011.

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11 UNITED STATES DISTRICT JUDGE